



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

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FILE NO. 03-008

COUNTIES:

At-Large Election
of County Board Chairman

ELECTIONS:

Filling of Vacancy in Office
of County Board Chairman

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The Honorable William A. Mudge
State's Attorney, Madison County
157 North Main Street, Suite 402
Edwardsville, Illinois 62025

Dear Mr. Mudge:

I have your letter wherein you inquire whether, following the adoption of a referendum providing for the at-large election of the chairman of the Madison County Board for a term of four years, one person may simultaneously seek election to the offices of county board chairman and county board member, and, if elected to both, serve in those positions. On a related issue, you have also inquired whether, if a vacancy occurs in the office of county

board chairman elected at-large with more than 28 months remaining in the term, the person appointed to fill the vacancy will serve for the remainder of the term or only until the next general election.

With respect to your first question, it is my opinion that a candidate may simultaneously run for election to the offices of county board chairman and county board member of Madison County, and, if elected, may serve in both capacities. Further, it is my opinion that, if a vacancy occurs in the office of county board chairman with more than 28 months remaining in the term, then pursuant to the provisions of section 25-11 of the Election Code (10 ILCS 5/25-11 (West 2002)) the person appointed to fill that vacancy will serve only until the next general election, at which time a successor will be elected to complete the term.

You have stated that in the April 1, 2003, consolidated election the voters of Madison County adopted the following referendum:

Shall the Chairman of the Madison County Board be elected at-large, by the voters, for a four-year term of office, and not be required to be a member of the Madison County Board?

Accordingly, the chairman of the county board will be elected on an at-large basis beginning with the 2004 election cycle.

You have stated in your letter that the referendum in question was held "pursuant to" section 2-3007 of the Counties Code (55 ILCS 5/2-3007 (West 2002)), which provides, with respect to counties of under 450,000 population, including Madison County:

Chairman of county board; election and term. Any county board when providing for the reapportionment of its county under this Division may provide that the chairman of the county board

shall be elected by the voters of the county rather than by the members of the board. In that event, provision shall be made for the election throughout the county of the chairman of the county board * * *. In all other counties the chairman may either be elected as a county board member or elected as the chairman without having been first elected to the board. * * * In counties where the chairman of the county board is elected by the voters of the county and is not required to be a county board member, the chairman shall be elected to a 4 year term. In all cases, the term of the chairman of the county board shall commence on the first Monday of the month following the month in which members of the county board are elected.

Section 2-3007 does not require a county board to obtain referendum approval to change the method of selection of the county board chairman, nor does that section purport to govern such referenda. I will assume, based upon the circumstances, that the referendum was conducted pursuant to article VII, section 4(c) of the Illinois Constitution of 1970 and section 28-7 of the Election Code (10 ILCS 5/28-7 (West 2002)), which govern referenda to change the manner of selection of county officers. *See generally Taylor v. County of St. Clair*, 57 Ill. 2d 367 (1974). Clearly, however, the language of the proposition was styled after that of section 2-3007 of the Counties Code, and, therefore, the interpretation of the statutory language will assist in discerning the meaning of the language of the referendum question.

The primary goal of statutory construction is to ascertain and give effect to the intent of the General Assembly. *King v. Industrial Comm'n*, 189 Ill. 2d 167, 171 (2000). In ascertaining legislative intent, the inquiry begins with the language of the statute (*In re Marriage of Burgess*, 189 Ill. 2d 270, 277 (2000)), and where the language of a statute is clear, there is no reason to search for motives of the legislature to justify giving a statute a meaning different from

what the words of the statute indicate, especially when there are reports of legislative debates to shed light on the intention of the General Assembly. *Kozak v. Retirement Board of Firemen's Annuity & Benefit Fund of Chicago*, 95 Ill. 2d 211, 220 (1983), *appeal after remand*, 128 Ill. App. 3d 678, *appeal denied* (1985).

The phrase "[i]n all other counties the chairman may either be elected as a county board member or elected as the chairman without having been first elected to the board" in section 2-3007 of the Counties Code was added by Public Act 81-1116, effective July 1, 1980. The sponsor of the amendment, Representative Flinn, who represented St. Clair County, explained that:

* * * it would permit [a chairman elected at-large] to either be a Member of the Board or not be a Member of the Board. They could be a voting Member if they got elected as a Member of the Board, but they could be a nonvoting Member if they were elected County Board Chairman and not a Board Member. Remarks of Rep. Flinn, June 27, 1979, House Debate on Senate Bill No. 93, at 90.

The Senate sponsor of the motion to concur with the House amendment gave a similar explanation of its purpose:

This amendment provides that a county board chairman running at large does not necessarily also have to be elected to the board as a voting member. It does not preclude him from being elected to both, but in the event that he is elected as county board chairman, but not as a board member, he will be a non-voting member of the county board and that's what Amendment No. 4 does. Remarks of Sen. Hall, June 30, 1979, Senate Debate on Senate Bill No. 93, at 51.

Although not specifically referred to in the legislative debates, it appears that this amendment was proposed in response to the decision in *Taylor v. County of St. Clair*, 57 Ill. 2d 367 (1974), wherein the court held that a candidate for county board chairman must either be a member of the board or a candidate for board membership in order to run.

The language of the amended statute plainly provides that a county board chairman who is elected at-large may either be elected as a board member, or be elected as chairman without having been elected as a board member. The remarks of legislators sponsoring the amendatory language to the statute clearly demonstrate their intention that the chairman be permitted to serve as a board member, but not be required to do so. The referendum adopted by the voters of Madison County simply reflects the statutory language.

Based upon the language of the statute, coupled with the clear statements of the sponsors of the legislation, it is my opinion that a person may simultaneously be a candidate for the offices of county board member and county board chairman of Madison County, and may serve in both offices, if elected to both. It is equally permissible, however, for a person who is not a board member or a candidate for board membership to run for county board chairman, and, if elected, serve as a non-voting chairman.

Your second inquiry concerns whether a vacancy in the office of a county board chairman who is elected at-large, which occurs with more than 28 months remaining in the term, is to be filled by appointment for the remainder of the term, or only until the next general election.

Your question arises out of the apparent conflict between the provisions of subsection 2-3009(c) of the Counties Code (55 ILCS 5/2-3009(c) (West 2002)) and those of section 25-11 of the Election Code (10 ILCS 5/25-11 (West 2002)). Subsection 2-3009(c) of the Counties Code provides, in pertinent part:

(c) Vacancies; time for elections. * * * [I]f a vacancy occurs in the office of chairman of the county board, the remaining members of the board shall elect one of the members of the board to serve for the balance of the unexpired term of the chairman.

Section 25-11 of the Election Code, however, provides:

When a vacancy occurs in any elective county office, or in a county of less than 3,000,000 population in the office of clerk of the circuit court, in a county which is not a home rule unit, the county board or board of county commissioners shall declare that such vacancy exists and notification thereof shall be given to the county central committee or the appropriate county board or board of county commissioners district committee of each established political party within 3 days of the occurrence of the vacancy. The vacancy shall be filled within 60 days by appointment of the chairman of the county board or board of county commissioners with the advice and consent of the county board or board of county commissioners. * * * The appointee shall be a member of the same political party as the person he succeeds was at the time of his election and shall be otherwise eligible to serve. The appointee shall serve the remainder of the unexpired term. *However, if more than 28 months remain in the term, the appointment shall be until the next general election at which time the vacated office shall be filled by election for the remainder of the term.* In the case of a vacancy in a seat on a county board or board of county commissioners which has been divided into districts under Section 2-3003 or 2-4006.5 of the Counties Code, the appointee must also be a resident of the county board or county commission district. (Emphasis added.)

It is presumed that statutes that relate to one subject are governed by one spirit and a single policy and that the General Assembly intended the enactments to be consistent and harmonious. *MQ Construction Co., Inc. v. Intercargo Insurance Co.*, 318 Ill. App. 3d 673, 681 (2000). Where the passage of a series of legislative acts results in confusion and consequences which the General Assembly may not have contemplated, however, the Acts must be construed in such a way as to permit the practical application of the statutes. *Scofield v. Board of Education of Community Consolidated School District No. 181*, 411 Ill. 11, 20 (1952).

The language that now appears in subsection 2-3009(c) of the Counties Code has remained essentially unchanged since its enactment in Public Act 76-1650, effective October 2, 1969. Public Act 76-1650 was one of a series of Acts that implemented the change to popularly-elected county boards in counties other than Cook County. *See generally* Public Act 76-1652, effective October 2, 1969. Public Act 76-1650 also provided that a county board chairman, whether elected by the voters or selected by the members of the board, was required to be a member of the board and served a two year term. As discussed above, Public Act 81-1116, effective July 1, 1980, provided for the election of a county board chairman who is not required to be a board member. The term of office of the chairman, however, remained fixed at two years. The term of a chairman elected at-large who is not required to be a board member was changed to four years the following year by Public Act 82-371, effective September 2, 1981.

What is now section 25-11 of the Election Code was originally enacted in 1943 (1943 Ill. Laws (vol. 2) 1, sec. 25-11, effective July 1, 1943) and provided for filling vacancies in the office of county commissioner by appointment, but required that if the unexpired term

exceeded one year, a special election be held. (At that time, the county boards of supervisors in counties under township organization were comprised *ex officio* of the several township supervisors and assistant supervisors; hence, vacancies in those offices were filled in accordance with the laws governing townships.) Section 25-11 was amended by Public Act 79-118, effective July 8, 1975, to provide for filling vacancies in the offices of commissioner or board member by appointment "until the next election." The section was amended with substantially its current language, providing for appointment only until the next general election if more than 28 months remain in the unexpired term, by Public Act 84-790, effective September 21, 1985.

Significantly, Public Acts 79-118 and 84-790 made numerous changes in the Election Code and in other Acts relating to the manner of filling vacancies in offices, including provisions for the selection of candidates in primary elections. It is evident from these amendments that the General Assembly intended that the filling of vacancies be controlled by the Election Code, rather than by the organic acts governing individual units of government. Indeed, Public Act 79-118 removed a number of provisions which would have conflicted with section 25-11 of the Election Code.

In contrast, subsection 2-3009(c) of the Counties Code includes, in a section that no longer relates to the selection of county board chairmen or the filling of any other vacancy in public office, a single sentence relating to the filling of a vacancy in the office of county board chairman. Until the amendment of section 2-3007 in 1981 changing the term of office of certain chairmen to four years, that provision was not in conflict with the Election Code because the

office of chairman was on the ballot every two years without regard to the occurrence of a vacancy. Subsequent thereto, it appears that, until the adoption of the referendum in Madison County, only one county had a chairman to whom the four-year term applied.

Giving due consideration to the language and the history of these two provisions, it is my opinion that the more recent and more comprehensive provisions of section 25-11 of the Election Code reflect the intention of the General Assembly with respect to the filling of vacancies in all elective county offices having terms exceeding two years, including the office of chairman of the county board in counties in which the chairman is elected at-large and is not required to serve simultaneously as a member of the county board. *Accord*, Ill. Att'y Gen. Op. No. 96-023, issued May 10, 1996. Therefore, in the event of a vacancy leaving more than 28 months in the unexpired term of a county board chairman, it is my opinion that the vacancy should be filled in accordance with the provisions of section 25-11 of the Election Code, which provide that a person may be appointed to fill the vacancy only until the next general election, at which time a successor should be elected to serve the remainder of the term.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Lisa Madigan", written in a cursive, flowing style.

LISA MADIGAN
Attorney General